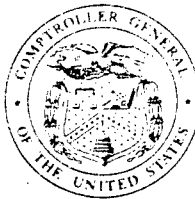


17830 Request

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196726

DATE: April 22, 1981

MATTER OF: Prince Construction Company—*[Request For]* Reconsideration

DIGEST:

Prior decision denying request for relief from mistake in bid alleged after award is modified as relief is warranted where new evidence shows that contracting officer failed to obtain verification from representative of bidder with authority to bind bidder.

Prince Construction Company (Prince) requests reconsideration of our decision in the matter of Prince Construction Company, B-196726, January 9, 1980, 80-1 CPD 29, wherein we denied the firm's request for a \$15,584 increase in contract price because of an alleged mistake in bid asserted after award. The contract was awarded by the Veterans Administration (VA) Medical Center, Beckley, West Virginia, for the installation of an automatic sprinkler system and the removal of old doors and replacing them with fire rated doors.

Prince contends that our decision was based upon the incorrect representation of the procuring agency that the contracting officer requested and received verification of Prince's bid price prior to award. In view of additional information submitted on reconsideration, we believe that relief is justified and, therefore, our decision of January 9, 1980, is modified.

The invitation for bids (IFB) read:

"ITEM I PROVIDE ALL LABOR, SUPPLIES,
MATERIALS AND EQUIPMENT NECESSARY
TO INSTALL AN AUTOMATIC SPRINKLER
SYSTEM: _____"

~~216605~~ 114987

"ALTERNATE NO. 1: All Work As Indicated
In Bid Item No. 1 Plus
Removal And Replacement
Of Doors As Indicated On
Drawing As Alternate
No. 1.

"Note: It Is Anticipated That Award Will
Be Made On Bid Item No. 1; However,
In The Event Offers Do Not Exceed
Funds Available, Award Will Be
Made On Alternative No. 1. Bidders
Are To Give Price On Both Bid Items."

On bid opening, the three bids received were as
follows:

	<u>Item 1</u>	<u>Alternate No. 1</u>
Prince Construction Company	\$425,000	\$492,000
Brewer and Co. of W. Va., Inc.	\$446,654	\$561,504
M.C. Dean Electric	\$719,400	\$ 69,900*

*Bid on Alternate No. 1 was withdrawn
after contracting officer advised Dean
of apparent mistake in Alternate 1.

When the VA forwarded the file for our decision
on the claim, the record contained the statement that,
because of the "significant difference" between the two
low bids the contracting officer requested and received
proper verification of Prince's bid price before award.
We note that the difference is approximately 40 percent
for the removal and replacement of doors portion of
alternate No. 1 resulting in an approximate difference
between total bid prices of 12 percent, erroneously
reported to be 9 percent by the agency. Therefore,
we decided that the contract as awarded was valid
and binding.

Since that decision, we have received new
information in the form of affidavits from the con-
tracting officer and Prince personnel bearing on the

question whether proper verification was requested and obtained. The affidavits disclose conflicts concerning whether verification of Prince's bid was ever requested or received by the contracting officer during two preaward telephone conversations between the contracting officer and the clerical secretary to the president of Prince. We do not find it necessary to resolve the conflicts since the contracting officer, in effect, admits that no individual with authority to bind the company was requested to verify or did verify the bid price prior to the award. Because of this, even if the secretary was apprised of the request for verification and indicated the accuracy of the bid price, there was no adequate or proper verification. Inherent in the mistake-in-bid regulations is the concept that verification must be obtained from someone with authority to bind the bidder. In this regard, we note that the president of Prince signed the bid. Therefore, since the contracting officer's alleged verification request was inadequate, the award did not result in a binding contract, and relief is warranted.

In this type of situation, a contract ordinarily is reformed upon presentation of evidence establishing the error and the intended bid. Charles E. Weber & Associates, B-186267, May 12, 1976, 76-1 CPD 319. However, the record is unclear as to the extent of performance. Further, while Prince's original mistake claim involved failing to include 936 hours of labor at \$15 per hour on Alternate No. 1 only, in requesting reconsideration Prince alleges a second mistake involving the total contract amount. VA has not provided a response to this latter claim to our Office. In view of this, we are unable to decide the question of appropriate relief and the file is being returned to the VA for determination consistent with this decision.

Our decision of January 9, 1980, is accordingly modified.

Milton J. Arosow

Acting Comptroller General
of the United States